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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of Request of US WEST Communications, Inc. for Interconnection Cost Adjustment Mechanisms	CC Docket No. 97-90 CCB/CPD 97-12

REPLY OF GTE SERVICE CORPORATION TO PETITION FOR DECLARATORY RULING AND CONTINGENT PETITION FOR PREEMPTION

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating companies, hereby submits its Reply to the comments filed by various parties in the above-captioned matter.[1] The record demonstrates that incumbent local exchange carriers ("ILECs") are entitled to recover the costs of implementing the mechanisms necessary for the provision of interconnection, unbundled network elements ("UNEs"), and resale services to competitive local exchange carriers ("CLECs"). It further confirms that state regulators are best positioned to determine the manner and timing of such cost recovery. Accordingly, consistent with the requirements of the Telecommunications Act and the Stay Order entered by the United States Court of Appeals for the Eighth Circuit,[2] the Commission should deny the

[1] Electric Lightwave, Inc., McLeodUSA Telecommunications Services, Inc., NEXTLINK Communications, L.L.C. ("Petitioners"), Petition for Declaratory Ruling and Contingent Petition for Preemption (filed Feb. 20, 1997) ("Petition").

[2] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("First Interconnection Order"), *recon.*, 11 FCC Rcd

(Continued...)

requested declaratory ruling and defer to the states to address the matters raised by Petitioners.

I. COMMENTERS CONFIRM THAT ILECS ARE ENTITLED TO RECOVER THE COSTS OF IMPLEMENTING LOCAL COMPETITION.

As GTE explained in its Opposition, the language of Section 252(d), the legislative history of the Act, the First Interconnection Order, and the Commission's long-standing ratemaking policies all confirm that ILECs are entitled under the Act to recover the costs imposed on them by competitive local exchange carriers ("CLECs") seeking to use ILEC networks to provide local exchange and exchange access service. Many commenters echoed GTE's showing. For example, Southwestern Bell and Pacific Bell, U S WEST, and Bell Atlantic and NYNEX, all of whom opposed the Petition, endorsed this reading of the Act.[3] But, even commenters such as ACS, WorldCom, and TCG, who supported the Petition, agree with the general premise that ILECs are entitled to recover the costs of providing interconnection, UNEs, and resale services to CLECs.[4]

(...Continued)
13042 (1996), *petition for review pending and partial stay granted, Iowa Utilities Board, et al. v. FCC*, No. 96-3321, 1996 WL 589204 (8th Cir. filed Oct. 15, 1996) (granting stay of pricing rules and "pick and choose" rule) ("Stay Order").

[3] *See* Comments of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell, CC Docket No. 97-90, CCB/CPD 97-12 (filed Apr. 3, 1997); Opposition of U S WEST, Inc. to Petition for Declaratory Ruling and Contingent Petition for Preemption, CC Docket No. 97-90, CCB/CPD 97-12 (filed Mar. 3, 1997); Joint Comments of Bell Atlantic and NYNEX, CC Docket No. 97-90, CCB/CPD 97-12 (filed Apr. 3, 1997).

[4] *See, e.g.,* Comments of American Communications Services, Inc., CC Docket No. 97-90, CCB/CPD 97-12 at 3 (filed Apr. 3, 1997); Comments of WorldCom, Inc., CC Docket
(Continued...)

Notably, of those commenters who apparently oppose full cost recovery by ILECs, none has convincingly explained how the statutory requirement for prices "based on the cost . . . *of providing* the interconnection or network element" and which "may include a reasonable profit"[5] can be read to foreclose recovery of the actual costs of providing the service and elements purchased by CLECs.[6] Instead, they focus their comments principally on the argument that *they* should not pay those costs. They would prefer that ILECs' implementation costs, if recovered at all, be assessed on other users of the ILECs' services. The several variations on this theme suggested by commenters are equally unpersuasive.

Some commenters, like the Telecommunications Resellers Association ("TRA"), blithely claim that the costs of upgrades to U S WEST's network necessary to accommodate CLECs should be paid by all users of the network rather than by the CLECs, notwithstanding the fact that it is CLECs who cause the cost to be incurred.[7]

(...Continued)
No. 97-90, CCB/CPD 97-12 at 4-5 (filed Apr. 3, 1997) ("WorldCom Comments"); Comments of Teleport Communications Group Inc. in Support of Petition for Declaratory Ruling, CC Docket No. 97-90, CCB/CPD 97-12 at 4-5 (filed Apr. 3, 1997) ("TCG Comments").

[5] 47 U.S.C. § 252(d)(1)(A)-(B) (emphasis added).

[6] Some commenters claim that U S WEST is proposing ICAM charges as a method of recovery for embedded costs. Although GTE believes that ILECs are entitled to recover their embedded costs, because neither the Petitioners nor U S WEST alleges that ICAM charges are designed to recoup embedded costs, GTE will not address that issue in this proceeding.

[7] Comments of the Telecommunications Resellers Association, CC Docket No. 97-90, CCB/CPD 97-12 at 7-8 (filed Apr. 3, 1997)("TRA Comments").

Moreover, TRA is unclear as to whether "all users" include CLECs and, in any event, makes no showing that "all users," as opposed to CLECs and their customers, will benefit from the cost expenditures. Thus, TRA's analysis is neither consistent with the Act, nor even internally consistent.

Similarly, Cox contends U S WEST's customers must absorb the costs of changing its network to meet CLEC needs because those costs are "simply a cost of doing business that is recovered from its general customer user base."[8] Modifying ILEC networks to provide interconnection, UNEs, and other services to CLECs is a cost of doing business for the CLEC, not for ILEC customers. As GTE pointed out in its Opposition, the Commission noted numerous times in its First Interconnection Order that CLECs must pay the costs they impose on ILECs. For example, the Commission specifically stated that CLECs must pay the costs of expensive interconnections, loop conditioning, special mechanisms required for unbundling loops, cross-connect facilities, higher quality UNEs or interconnection, and rebranding or unbranding.[9] Congress intended for CLECs to have the option to use ILEC networks to provide local exchange service when that is more efficient than building their own facilities; as is made clear by Section 252(d), it did not intend for ILECs to underwrite the costs to CLECs of choosing that option.

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[8] Comments of Cox Communications, Inc., CC Docket No. 97-90, CCB/CPD 97-12 at 5 (filed Apr. 3, 1997).

[9] *See* Opposition of GTE Service Corporation to Petition for Declaratory Ruling and Contingent Petition for Preemption, CC Docket No. 97-90, CCB/CPD 97-12 at 5-7 (filed Apr. 3, 1997) ("GTE Opposition").

Other commenters, such as Sprint and CompTel, argue that the costs in dispute are already included in the TELRIC standard defined by the Commission's rules.[10] GTE has previously explained that the Commission's TELRIC standard is not compensatory, and the Eighth Circuit Court of Appeals has at least tentatively agreed that its application is likely to "result in many incumbent LECs suffering economic losses beyond those inherent in the transition from a monopolistic market to a competitive one."[11] Whether or not state-established prices already include recovery of any portion of these costs is a question for state commissions to address, not the FCC.

Finally, certain commenters have supported issuance of the requested declaratory ruling against U S WEST's ICAM charges on the basis that either states lack the authority to impose such charges outside of the negotiation and arbitration process[12] or the establishment of separate charges for the recovery of these costs violates Section 252 of the Act.[13] Of course, the Act contains no such prohibitions. So long as the cost recovery standard in Section 252 is satisfied, states remain free to establish any rate structure they choose under the terms of the Eighth Circuit's stay. The Commission may not seek to avoid the impact of that court order here.[14]

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[10] Sprint Comments, CC Docket No. 97-90, CCB/CPD 97-12 at 4-5 (filed Apr. 3, 1997); Comments of the Competitive Telecommunications Association, CC Docket No. 97-90, CCB/CPD 97-12 at 3-5 (filed Apr. 3, 1997).

[11] Stay Order at 18.

[12] WorldCom Comments at 5.

[13] TCG Comments at 3-4.

[14] *See* GTE Opposition at 10.

II. NO SHOWING HAS BEEN MADE THAT ALLOWING ILECS TO RECOVER THEIR COSTS CREATES A BARRIER TO ENTRY.

As GTE explained in its Opposition, requiring that CLECs pay the costs they impose on ILECs is not a barrier to entry.[15] CLECs are not required to use any part of the ILEC's network to enter the local exchange market. However, when they choose to acquire services or network elements from an ILEC, they must pay the costs the ILEC incurs in meeting their requests. These are costs of entering the local exchange market. If ILECs were forced to underwrite the CLECs' true costs of using the ILECs' resources, there would be no facilities-based competition because it would always be less expensive from the CLECs' perspective to have ILECs defray their expenditures. Thus, it is not surprising that CLECs have failed to make the requisite "convincing showing" that competition can or would be harmed by requiring them to pay their own costs of doing business.[16]

But, even assuming, *arguendo*, that payment of such costs could somehow be construed as a barrier to entry, no commenter offers even a plausible justification for the Commission to act under Section 253 at this time. Although several commenters complain about U S West's proposed ICAM charges and request preemption, they have not cited even one state which has approved the levy of these charges on CLECs. Therefore, the Commission has no "statute," "regulation," or "legal requirement" to consider, as required for the Commission to exercise its preemption authority under

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[15] GTE Opposition at 11-12.

[16] GTE Opposition at 11-12.

Section 253.[17] Until a particular state adopts a statute, regulation, or legal requirement based on these charges, the Commission not only has no authority to preempt them, but also lacks any record basis for examining their impact on competition or market entry. Accordingly, the Commission may not as a matter of law and should not as a matter of policy grant the relief sought by the Petitioners here.

III. THE RECORD DEMONSTRATES THAT STATE COMMISSIONS ARE THE APPROPRIATE FORUMS TO CONSIDER THESE ISSUES.

In its Opposition, GTE explained that Congress intended that state commissions determine the appropriate methods for ILEC cost recovery, and the Eighth Circuit is currently considering this issue.[18] However, as detailed above, a number of commenters have suggested that the Commission should nonetheless issue the requested declaratory ruling against U S WEST's ICAM charges for reasons related to the sufficiency of the record justification for those charges, including allegations of double recovery,[19] inadequate supporting documentation,[20] and improper ILEC motivations regarding efficient operations.[21] Because GTE has not examined U S WEST's proposals, it takes no position here as to whether they are an appropriate

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[17] 47 U.S.C. § 253.

[18] GTE Opposition at 10-11.

[19] Comments of GST Telecom, Inc., CC Docket No. 97-90, CCB/CPD 97-12 at 7-9 (filed Apr. 3, 1997) ("GST Comments").

[20] Comments of Sprint Corporation, CC Docket No. 97-90, CCB/CPD 97-12 at 8-9 (filed Apr. 3, 1997).

[21] GST Comments at 4-5.

mechanism for cost recovery in any of the states in which U S WEST operates, and neither should the Commission. The lack of detail in the current Commission record on the nature of these charges and the fact that, according to commenters, the charges differ in each state simply serve to emphasize that detailed examination on an individual state basis is necessary to determine their validity. This is the assigned role of the state commissions under the Act.

For example, as Aliant Communications explained in its opposition to the Petition, state commissions are best able to examine and consider the individual circumstances and market conditions involved, and develop network pricing rules accordingly. The declaratory relief requested would interrupt the "dialogue" now taking place at the state commissions and ultimately "would reduce state commissions' ability to develop appropriate rules for network cost recovery."[22] The fact that some CLECs claim it is too burdensome for them to participate in state cost determination proceedings[23] neither diminishes the need for those proceedings nor eliminates the states' responsibilities to conduct them. It also certainly does not provide the authority or the justification for the Commission to seek to usurp the states' proper role.

Moreover, the comments of the California Public Utility Commission confirm that state commissions not only are prepared to consider the issues raised by the commenters, but also that they have already begun to develop and implement tailored

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[22] Opposition of Aliant Communications Co., CC Docket No. 97-90, CCB/CPD 97-12 at 2-3 (filed Apr. 3, 1997).

[23] TCG Comments at 11-12.

solutions to any concerns found to be justified.[24] Because state commissions are familiar with ILEC operations in their states, routinely examine ILEC cost studies, and have the overall responsibility for approving ILECs' intrastate rates, they are the ideal forum for considering how implementation costs should be recovered. In contrast, the record in this proceeding contains no detailed information even on the ICAM charges and no information whatsoever on any other ILEC charges. Thus, states rather than the Commission should deal with the issues raised the Petitioners.

[24] Comments of the People of the State of California and the Public Utilities Commission of the State of California on Petition for Declaratory Ruling and Contingent Petition for Preemption on Interconnection Cost Surcharges, CC Docket No. 97-90, CCB/CPD 97-12 (filed Apr. 3, 1997). The California Public Utility Commission also notes that "wholesale preemption could adversely impact competition in California and illegally intrude in California's lawful authority over intrastate telecommunications matters." *Id.* at 2. GTE believes that the Eighth Circuit will ultimately determine that the Commission has no authority to regulate intrastate interconnection, resale, or UNE pricing.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny the Petitioners' request for a declaratory ruling.

Respectfully submitted,

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April 28, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 28TH day of April, 1997, I caused copies of the foregoing REPLY OF GTE SERVICE CORPORATION TO PETITION FOR DECLARATORY RULING AND CONTINGENT PETITION FOR PREEMPTION to be served via first class mail, postage prepaid, on:

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